

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5730 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTILAL HIRALAL PATEL UNCLE OF DET SUBHASHBHAI

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR AJ Desai AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/01/2000

ORAL JUDGEMENT

#. Heard Mr.N.M.Kapadia, learned advocate for the
petitioner and Mr.A.J.Desai, learned AGP appearing for
respondents No. 1, 2 & 3.

#. That the uncle of the detenu one Shri Jayantilal

Hiralal Patel has challenged the detention order dated 1-5-1999 passed by respondent No.1 - The Commissioner of Police, Surat against the detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 ('PASA' for short') by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at running Page : 25 interalia indicates that in all three cases are registered against the detenu for the offences made punishable under Section 323, 504 etc of IPC read with Section 135 of Bombay Police Act. Furthermore, two witnesses on assurance of their anonymity, have given their statement on 26-3-1999 against the detenu about his criminal activities which referred to alleged incidents dated 21-2-1998 and 17-3-1998. That on the basis of the said material, the respondent No.1 has come to the conclusion that the detenu is a dangerous person within the meaning of Section 2(c) of the PASA. That enforcement of general provisions of law not being sufficient to prevent the petitioner from continuing his anti social activities and as such, detention under PASA is necessary, hence the impugned order is passed.

#. It has been submitted on behalf of the petitioner at bar that the detenu was released on bail in the cases registered against him. However, the detaining authority while passing the impugned order has failed to consider the less drastic remedy like cancellation of bail as available under Section 437(5) of CrPC would be ineffective if attempted, which has vitiated the subjective satisfaction and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. On scrutiny of papers, it appears that the detaining authority while concluding the grounds of detention, has

observed that the preventive measures under general law is not likely to check criminal activities. Further the averments made in the grounds of detention, is devoid of any facts whether any attempts were made to claim the cancellation of bail granted to the detenu in a registered cases against him after the receipt of further information of alleged criminal activities of the detenu while considering the preventive remedy like claiming of cancellation of bail granted to the petitioner in cases registered against the petitioner. In view of the same, the impugned order being passed on subjective satisfaction which is vitiated for non application of mind, cannot be sustained in law.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 1-5-1999 passed by respondent No. 1 - The Commissioner of Police, Surat against the detenu is hereby quashed and set aside. The detenu - Subhashbhai Ramaniklal Patel is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 24-1-2000 [A.K.Trivedi, J.]

#kailash#